

To: Policy Unit
National Emergency Management Agency
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By email to EmergencyManagementBill@nema.govt.nz

From: Civil Contractors NZ Incorporated
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Date: 20 May 2025

Strengthening New Zealand's Emergency Management Legislation

Introduction

Thank you for the opportunity to make this submission.

Civil Contractors New Zealand (CCNZ) is an industry association representing the interests and aspirations of more than 800 member organisations, including more than 500 large, medium-sized, and small businesses in civil engineering, construction, and general contracting. Our 300 associate members provide valuable products, support, and services to contractor members. We live and work in all communities across New Zealand.

Our members play a vital role in the development of our country, our economy, and our way of life. They build and maintain the roads connecting our cities and towns; they install and care for the water networks that bring fresh water to houses and wastewater to treatment plants; they install the cables that bring the internet to homes and businesses. These are services a modern and developed economy must have to compete efficiently in world markets and to deliver high living standards for all New Zealanders.

In the context of this submission, our contractor members are inevitably some of the first responders in a natural disaster, conducting work such as clearing debris from bridges, constructing stop banks, repairing damage to transport and water networks, supporting rescue efforts and clearing silt.

They are the ones putting equipment and businesses on the line to save lives and repair the damage caused by these events. They have the practical knowledge around how most effectively any necessary work (particularly earthworks) under an Emergency Management framework will be undertaken. It is important their needs are understood and met, so they can support emergency recovery efforts in the most efficient and practical ways possible.

CCNZ supports efforts to streamline emergency response and recovery efforts. In particular, we advocate for removing legislative barriers to successful recovery efforts, providing for fast and effective decision making, ensuring a logical and effective emergency management structure is in place and well understood, providing sufficient funding to support the rescue, response and recovery effort, and ensuring that protections from prosecution are in place.

Context of our submission

CCNZ contributed to the *Independent Review into Hawke's Bay CDEM Group's Response to Cyclone Gabrielle*. Our observations included:

- No overall leadership and control.
- There appeared to be no coordinated plan in place that would be activated immediately upon an event occurring.
- Local government appeared ill-prepared i.e., it took a significant amount of time for councils to make sites available for depositing silt cleared from properties, despite the silt blocking emergency response.
- On collating offers of support, equipment and services from many CCNZ member companies (including equipment and skilled personnel) on day 2 of the response, we were told by local emergency management "we don't need your help". In the meantime, people and property remained at high risk, so much so that our members responded privately anyway.
- Repeated approaches to government agencies and local emergency management services remained unanswered.
- In some situations, contractors who took the necessary steps to save lives and property were threatened with prosecution for not following "normal" consent for work processes.
- Contractors largely worked for free in the first several weeks of the various responses. While it is necessary that people with skills, capability and equipment must be able to support those in need for a short period of time, the contractors themselves had also been impacted by the severe weather events, leading to an unsustainable situation where they were often tasked with work with no compensation.

Submission

Whole of Society Approach

We agree that emergency management requires a whole of society response, with the contributions that each sector of society can make clearly identified and integrated into an emergency management plan.

Objectives for Reform

Paragraph 31 suggests that "The hazard-agnostic, whole-of-society risk management approach promoted by the CDEM Act was world-leading in 2002 and remains international best practice".

We would dispute that. With CDEM Groups populated by local government officials, and Coordinating Executive Groups populated by other government agency officials, the weakness is that emergency management response is informed entirely by office-based policy people rather than those who have on-the-ground practical emergency response experience, expertise and equipment.

We recommend a sixth objective be added – to ensure that those who have responsibilities in emergency management and response are sufficiently competent and experienced to undertake their responsibilities.

Objective 1: Strengthening community and iwi participation

Again, we support the whole of society approach. However, to “enable” and “empower” communities should mean those with the knowledge, skills and equipment to respond are able to do so.

We have seen several examples where contractors responding to emergencies have saved lives or opened up transport corridors threatened with prosecution for legitimate and lawful actions taken to protect people, animals, and property, which is not productive for efficient and effective emergency response.

Empowering and enabling communities should also requires protection from prosecution for legitimate and lawful actions taken to protect people, animals, and property.

Objective 1 Issue 1: Meeting the diverse needs of the community

We agree that emergency management should recognise the diverse need of our communities but feel that legislation could be too prescriptive. We need to retain flexibility to provide for any unique regional differences.

Objective 1 Issue 2: Strengthening and enabling Māori participation

The composition of CDEM Group should be based on skill and competency, regardless of which sector of society they come from. We do not support positions of right but do support the inclusion of those who are appropriately skilled and competent to contribute to leadership and direction in a response. No one group should be mandated through legislation.

Objective 1 Issue 3: Strengthening and enabling community participation

Everyone has a role to play in emergency management or in a response. However, we would argue that civil contractors have a unique role, given their understanding of and expertise in infrastructure (for example roads, water networks, electricity networks, and the like), how those assets perform under stress and what is need first to make them safe in an emergency, and second to restore these critical networks to support distressed communities. We argue that civil contractors should be included in CDEM Groups and Coordinating Executive Groups.

This is also where communities who are encouraged to participate should be able to do so unencumbered by the risk of prosecution for legitimate and lawful actions. Legislation will be required to enable this protection.

Objective 1 Issue 4: Recognising that people, businesses and communities are often the first to respond in an emergency

This supports our position on legal protection. We argue that a combination of B and C is appropriate - provide through legislation for protection from civil liability for loss or damage where acting reasonably and in good faith; and enabling compensation for labour costs where, for example, a civil contractor with specialist skills is directed to do something in circumstances where there is not time to contract the use of their time (labour).

Objective 2 Issue 5: Clear Direction and Control

This is essential for any future emergency management framework. The response to Cyclone Gabrielle showed how destructive a lack of leadership and direction can be on affected communities.

Whatever structure is chosen someone must be in control and be accountable for decisions or the lack of decisions taken. The review into the Cyclone Gabrielle response has clearly shown that there is no accountability in the current emergency management framework.

On the topic of accountability, local government needs to be held accountable for ensuring that prevention work is regularly undertaken and maintained to help mitigate the impact of an emergency. Again, there is no evidence of this forthcoming from the Cyclone Gabrielle review.

Objective 2 Issue 6: Strengthening the regional tier of emergency management

Whatever option is chosen we agree that there needs to be clear direction and accountability.

We submit that CDEM Groups should be responsible for organising emergency management functions, and that the Coordinating Executive Group should report to the Director on how and to what extent it has delivered on its functions under the CDEM Act.

Objective 2 Issue 7: Keeping emergency management plans up to date

We agree with option 2 to enable targeted amendments in the National CDEM Plan and CDEM Group plans so roles and responsibilities and other matters can be updated without a full review.

Objective 3 Issue 8: Stronger national direction and assurance

We agree with option 3 that the performance of those with responsibilities under the CDEM Act should be subject to mandatory standards to be set through rules (legislative). This supports both a competency and an accountability test.

However, we note the focus on legal compliance in this section. We believe that there also must be strong performance and accountability measures in place to address competency issues.

Objective 3 Issue 9: Strengthening local hazard risk management

We agree with the non-legislative approach, providing clearer guidance about what it means to achieve an “acceptable” level of risk.

Objective 3 Issue 10: Strengthening due consideration of taonga Māori, cultural heritage and animals during and after emergencies.

We do not believe that this should be legislated but support the development of guidance on when and how to consider taonga and other cultural heritage.

Objective 4 Issue 11: Reducing disruption to the infrastructure that provides essential services

We agree with option 3, to replace the lifeline utilities framework with an expanded, principles-based definition of “essential infrastructure”. Other pieces of legislation or government policy refer to “critical infrastructure”, and this includes roading, water networks (drinking, waste, storm), and utilities such as electricity or telecommunications.

We believe in “carrots” rather than “sticks”, so having the Director increase their oversight for guidance and monitoring of lifeline utilities’ business continuity planning is appropriate.

We also agree that any barriers to information sharing and cooperation must be removed. This should extend to removing local government’s propensity for parochialism and “protecting their territory”. In many regions across New Zealand, some councils do not cooperate with others within their own regions, leading to a lack of coordination, duplication, not sharing and learning from best practice, etc.

One technique that has worked well in other sectors (such as horticulture with being prepared for an unwanted pest incursion) is to run a desktop response exercise annually. This involves all parties to a response (including government agencies) being presented with a scenario that will test the management plan. This has proven to be an effective way to fine tune plans.

Objective 4 Issue 12: Strengthening central government business continuity

We support option 4, extending the current business continuity requirements to include a broader group of central government organisations, including Police, the Defence Force, and others.

As noted above, these should all be included in an annual desk top exercise to test the emergency management framework.

Objective 5 Issue 13: Managing access to restricted areas

We agree that there needs to be better guidance and consistency to manage restricted site access. For roads, NZTA has a key role to play here.

Civil contractors are in the best position to identify and manage hazards on critical infrastructure sites. They need to be able to access these sites with urgency while at the same time having the authority to access these sites.

This does need to be supported by the police and defence force. During Cyclone Gabrielle, road workers had weapons presented at them by members of the public determined to access restricted areas.

We also believe that there needs to be more clarity about when defence forces may be deployed. In Cyclone Gabrielle, the police response was too little too late. The community would have benefitted from the early deployment of defence personnel to counter the rapidly escalating levels of crime.

Objective 5 Issue 14: Clarifying who uses emergency powers at the local level

We agree that there needs to be better clarity and visibility of the functions and powers of the CDEM Groups, Controllers and Recovery Managers.

Objective 5 Issue 15: Modernising the process to enter a state of emergency or transition period

We agree that the declaration of a state of emergency should be extended to include electronic signature, or, in the absence of a working telecommunications network, verbally to be confirmed in writing once telecommunication is restored.

Objective 5 Issue 16: Mayors' role in local state of emergency declarations and transition period notices

We have not formed a view on this. However, while they have local knowledge, Mayors do not necessarily have the skills and competency to make that judgement. For this to succeed, Mayors would need to be able to access relevant training and development. They would also need confidence that those advising them had sufficient competence to provide that advice.

Further information

Last year, CCNZ submitted on Labour's draft Severe Weather Emergency Recovery Legislation Bill, which appears to have been parked by the new government. Some of the key points we raised in that submission follow.

- Legislation needs to support and incentivise faster decision making in the event of a natural disaster i.e. in the case of Hawke's Bay, allocation of appropriate sites to dump both clean and contaminated waste. Providing local authorities with increased flexibility to address the response and recovery is a necessary step and should be taken sooner

rather than later.

- Processes should be supported by appropriate legislation to overrule any rigid and unjust local authority actions where recovery efforts are undermined i.e., contractors threatened with prosecution for dumping waste at an “unauthorised” location, despite the lack of any “authorised” location, and the knowledge they were responding to immediate storm impacts in the middle of the night, taking actions that resulted in people’s lives and property being saved.
- Emergency responses should not be an excuse for being unprepared. Knee-jerk reactions are not an appropriate replacement for well-planned and well-resourced mechanisms. It is clear the emergency response to Cyclone Gabrielle was disjointed. If we had truly learnt from the Christchurch earthquakes, appropriate mechanisms for funding and coordinating response and recovery would have been in place
- The community has a vested interest in how future emergency responses will be managed. Consultation with broader community interests, and with the civil construction sector who are the subject matter experts on earthworks and land stabilisation and remediation should be conducted where possible.

Consistent with our comment above, any governance structure overseeing a response should include representation from our civil construction sector to better inform decision making and response options.

Conclusion

Thank you for the opportunity to make this submission. An effective emergency management and response framework is essential to protect people, animals, and property.

Civil contractors have a critical role to play in the design and execution of this framework.

We look forward to continuing to engage on this.

Alan Pollard
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